In addition, the Examiner is requiring election of a single disclosed species within Group I.

Applicants have provisionally elected, for search purposes only, silica, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the Restriction Requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups II and I as process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products, or (B) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). The Examiner states that "the product as claimed can be made by another and materially [different] process such as by a sol-gel process." However, the Examiner has not provided an example or reason to support the Examiner's conclusion. Therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the two groups are patentably distinct. As the Examiner has provided no reason in support of this belief, the Examiner has not met the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

The Examiner states that Groups I and II are related as mutually exclusive species in an intermediate-final product relationship and that under M.P.E.P. § 806.04(b) distinctness is

proven because Group I is useful to make other than the product in Group II. In addition, the Examiner states that the groups are patentably distinct under M.P.E.P. 806.04(h). The Examiner's basis for these conclusions is that "[i]n the instant case, the intermediate product is deemed useful as [a] desiccant and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants."

However, the Examiner has provided no support in his belief, and therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the groups are patentably distinct. As the Examiner has provided no reasons in his belief, the Examiner has not the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

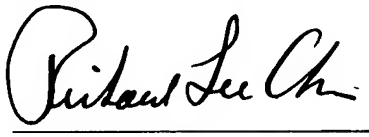
The Examiner states that Groups II and III are unrelated because "they are not disclosed as capable of use together and they have different modes of operation, different functions or different effects (M.P.E.P. §806.04, M.P.E.P. § 808.01). In the instant case, the different [groups] have different functions and different effects. The process of [Group] II cannot produc[e] the product of [Group III]."

However, the Examiner has provided no support in his belief, and therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the groups are patentably distinct. As the Examiner has provided no reasons in his belief, the Examiner has not met the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Richard L. Chinn, Ph.D.
Registration No. 34,305

Donald K. Drummond, Ph.D.
Registration No. 52,834

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)
DKD:smi:aps